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EXAMINER

CHAN, KO HUNG

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CEM BASTUJI and UMIT ALTUN

Appeal 2014-009671
Application 10/595,534
Technology Center 3600

Before MICHELLE R. OSINSKI, THOMAS F. SMEGAL, and
PAUL J. KORNICZKY, *Administrative Patent Judges*.

OSINSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Cem Bastuji and Umit Altun (Appellants)¹ appeal under 35 U.S.C. § 134 from the Examiner’s final decision rejecting claims 15–26, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Appellants identify “Cem Bastuji and Umit Altun . . . and/or Arcelik Anonim Sirketi” as the real party in interest. Appeal Br. 4.

THE CLAIMED SUBJECT MATTER

Claims 15, 17, and 22 are independent. Claim 15 is reproduced below and is illustrative of the claimed subject matter on appeal.

15. A basket having a bottom part and a base of the basket for use in a dishwasher comprising support wires forming the bottom part and having one or more support surfaces forming inclined planes relative to the base of the basket and on which objects to be washed are placed and one or more holders coupled to the support surfaces which enable objects to be placed in an upright position, and one or more drawers, providing additional space wherein objects to be washed may be placed, and coupled to the basket underneath the bottom part of the basket wherein a base plane formed by the base of basket and the bottom part of the basket form an unused volume for the one or more drawers and a spray arm coupled to the bottom part of the basket and wherein the base of the basket avoids any collision with the spray arm.

EVIDENCE

The Examiner relied on the following evidence in rejecting the claims on appeal:

Nance	US 2,065,391	Dec. 22, 1936
Goulouze	US 2,095,811	Oct. 12, 1937

REJECTIONS

- I. Claims 15–18, 20–23, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Appellants’ Admitted Prior Art² (hereinafter “AAPA”) and Goulouze. Final Act. 2–3.
- II. Claims 19 and 24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over AAPA, Goulouze, and Nance. *Id.* at 3.

² The Examiner refers to Figures 1 and 2 of the Specification as Appellants’ Admitted Prior Art. Non-Final Act. 2.

OPINION

Rejection I

Claims 15–17, 20, 22, and 25

The Examiner finds that AAPA teaches most of the limitations of independent claims 15, 17, and 22, but acknowledges that AAPA does not teach “a drawer having a base couple[d] to the basket and underneath the basket wherein the drawer base [is] at approximately [the] same level with a base of the basket.” Final Act. 2. The Examiner turns to Goulouze, finding that it teaches the missing limitations of AAPA. *Id.* The Examiner concludes that it would have been obvious to a person of ordinary skill in the art to modify the basket of AAPA “by providing an auxiliary slidable drawer/shelf therein for supporting additional items as taught to be desirable by Goulouze.” *Id.* at 2–3.

Appellants essentially argue that the Examiner has failed to show that the prior art teaches “a base plane formed by the base of [the] basket and the bottom part of the basket form an unused volume,” as recited in claim 15. Appeal Br. 29 (Claims App.). More particularly, Appellants argue that unused space A illustrated in Figure 2 of the Specification is unusable for providing additional space for a drawer because objects such as plates “would apparently overlap the unused space[,] thereby not allowing for or interfering with a drawer.” Appeal Br. 15. We are not persuaded of Examiner error because the Examiner has pointed to element “A” of Appellants’ Specification (Final Act. 2), which pertains to unused volumes below inclined planes that are used to support glasses in prior art dishwashers (Spec., Fig. 2, ¶ 2). We determine that at least a portion of this

space is unused as illustrated in Figure 2 of the AAPA (e.g., where the inclined planes are used to support glasses).

Appellants additionally argue that the Examiner has failed to show that the prior art teaches “one or more support surfaces forming inclined planes relative to the base of the basket,” as recited in claim 15. Appeal Br. 29 (Claims App.); *id.* at 15; *see also id.* at 17 (arguing that Goulouze does not teach this limitation). The Examiner responds that AAPA “shows one or more inclined surfaces (note the tilted cup and glass are supported on inclined surfaces in [F]igure 2 Prior Art in [A]ppellant[s’] drawing figures).” Ans. 4. We agree with the Examiner’s findings and are not persuaded of error.

Appellants further argue that Goulouze’s auxiliary shelf 15 “cannot be fairly construed a drawer since no items can be placed thereon” when the shelf is in the “inoperative position” of Figure 3 of Goulouze. Appeal Br. 16 (emphasis omitted). Appellants also argue that Goulouze’s auxiliary shelf 15 is designed for temporarily receiving and supporting articles when other articles are being placed into and/or removed from the refrigerator. *Id.* The Examiner responds that the claims do not require the drawer to support objects while in the closed position, but merely “provid[e] additional space wherein objects to be washed may be placed.” Ans. 5. The Examiner also responds that flat items such as utensils, knives and the like may fit on shelf 15 in the operative position. *Id.*

The Patent and Trademark Office gives claims their broadest reasonable construction “in light of the [S]pecification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). We agree with the Examiner

that, as the claims are currently written, the broadest reasonable construction of the claimed drawer reasonably encompasses a shelf that provides additional space for placing objects to be washed (such as during loading or unloading) when the shelf is temporarily in an outwardly extending position. *See, e.g.*, Merriam-Webster Dictionary, available at www.merriam-webster.com (broadly defining “drawer” as “a sliding box or receptacle opened by pulling out and closed by pushing in”) and Dictionary.com Unabridged Based on the Random House Dictionary, available at www.dictionary.com (broadly defining “receptacle” as “a container, device, etc. that receives or holds something”). We find nothing in the Specification that would be inconsistent with such a broad interpretation. *See In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989) (the words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the Specification).

Appellants also argue that the Examiner has failed to show that the prior art teaches “one or more holders coupled to the support surfaces which enable objects to be placed in an upright position,” as recited in claim 15. Appeal Br. 29 (Claims App.); *id.* at 16; *see also id.* at 17 (arguing that Goulouze does not teach this limitation). The Examiner responds that AAPA “clearly shows plates in [an] upright position as it is held by the holder (wire members of the basket).” Ans. 5. We agree with the Examiner’s findings and are not persuaded of error.

For the foregoing reasons, we are not persuaded that the Examiner erred in concluding that AAPA and Goulouze renders obvious the subject matter of independent claim 15. We sustain the rejection of independent claim 15, and claim 16 which depends therefrom, as unpatentable under 35

U.S.C. § 103(a) over AAPA and Goulouze. We also sustain the rejection of independent claims 17 and 22, and claims 20 and 25 which depend therefrom, and for which Appellants rely on the same arguments and reasoning we found unpersuasive in connection with independent claim 15. Appeal Br. 17–26.

Claims 18, 21, 23, and 26

Appellants present separate arguments regarding the patentability of dependent claims 18, 21, 23, and 26. Claims 18 and 23 recite that the basket “further compris[es] a carrier on which the drawer is placed,” and claims 21 and 26 continue that “the carrier further comprises one or more tracks on which the sleds rest.” Appeal Br. 30–31 (Claims App.). Appellants essentially argue that the Examiner has relied on Goulouze’s element 14 for both the claimed carrier on which the shelf/drawer is placed and the claimed tracks of the carrier on which the sleds of the shelf/drawer are placed. Appeal Br. 21–22 (for claims 18 and 21), 25–26 (for claims 23 and 26). The Examiner maintains that Goulouze teaches a carrier on which the drawer is placed, and includes tracks on which sleds (outer side bars) of the drawer rest. Ans. 5–6. We agree with the Examiner’s findings and are not persuaded of error. Merely because Goulouze’s element 14 is a “unitary element” (*see, e.g.,* Appeal Br. 21) *does not* preclude it from teaching a carrier comprising tracks.

For the foregoing reasons, we are not persuaded that the Examiner erred in concluding that AAPA and Goulouze renders obvious the subject matter of claims 18, 21, 23, and 26, and we sustain the rejection of these claims as unpatentable under 35 U.S.C. § 103(a) over these references.

Rejection II

Claims 19 and 24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over AAPA, Goulouze, and Nance. Final Act. 3. The Examiner acknowledges that AAPA and Goulouze fail to teach “the carrier attached to the basket via hooks.” *Id.* The Examiner finds that Nance teaches shelf 23 having at least one drawer 40 that is underneath shelf 23, with shelf 23 having carrier 27 on which drawer 40 is placed and with carrier 27 having hooks. *Id.* The Examiner concludes that it would have been obvious to modify “the carrier of [AA]PA and Goulouze combined such that hooks are provided therein for mounting onto the wire basket as taught to be desirable by Nance.” *Id.*

Appellants argue that “Nance teaches an ‘intermediate member 27’ supported upon ‘ledges 26’ formed by ‘a pair of rectangular loop wire portions connected by a cross-wire,’” and “[t]hese are not hooks.” Appeal Br. 27 (quoting Nance, 2:53–3:1 and citing Figs. 6, 7, and 13). Appellants have not persuasively explained why the structure of Nance is not a hook under a broadest reasonable interpretation. *See, e.g.*, Merriam-Webster Dictionary, available at www.merriam-webster.com (broadly defining “hook” as “a curved or bent device for catching, holding, or pulling”). As to the argument in the Reply Brief that Nance does not teach hooks enabling a carrier to be attached to a basket, but rather to shelf 23 (Reply Br. 12), the Examiner’s rejection relies on AAPA and Goulouze for the basket and carrier and relies on Nance only for its disclosure of hooks.

For the foregoing reasons, we are not persuaded that the Examiner erred in concluding that AAPA, Goulouze, and Nance renders obvious the

Appeal 2014-009671
Application 10/595,534

subject matter of claims 19 and 24, and we sustain the rejection of these claims as unpatentable under 35 U.S.C. § 103(a) over these references.

DECISION

The Examiner's decision to reject claims 15–26 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED